

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Christopher Hicks,

Plaintiff,

—v—

Robert Ercole,

Defendant.

09-cv-2531 (AJN)

MEMORANDUM &
ORDER

ALISON J. NATHAN, District Judge:

On March 12, 2015, this Court issued an order adopting Judge Dolinger's report and recommendation ("R & R") in this case. *See* Dkt. No. 41. That order contained the incorrect caption for this case. Accordingly, this order supersedes the previous order and the Clerk of Court is instructed the strike Dkt. No. 41 in its entirety.

Presently before the Court is Judge Dolinger's R & R recommending that the Court deny petitioner's writ of habeas corpus and that the case be dismissed with prejudice. *See* Dkt. No. 40. When a magistrate judge issues findings or recommendations, the district court "may accept, reject, or modify [them] in whole or in part." 28 U.S.C. § 636(b) (1). When no party has filed objections to the magistrate's R & R, the Court reviews it only for clear error. *See Gomez v. Brown*, 655 F.Supp.2d 332, 341 (S.D.N.Y. 2009). "A decision is 'clearly erroneous' when the reviewing Court is left with the definite and firm conviction that a mistake has been committed." *Courtney v. Colvin*, 13-cv-02884 (AJN), 2014 WL 129051, at *1 (S.D.N.Y. Jan. 14, 2014).

The deadline for the Defendant to file any objections was February 26, 2015. As of March 5, 2015, no objections have been filed. Accordingly, the Court reviews for clear error. Having reviewed the R & R, the Court finds no clear error in Judge Dolinger's well-reasoned

report. Accordingly, the Court adopts the R & R in its entirety. Defendant's writ is therefore DENIED and the petition is dismissed with prejudice.

In addition, the Court declines to issue a certificate of appealability. Petitioner has not made a substantial showing of a denial of a federal right, and appellate review is therefore not warranted. *See Love v. McCray*, 413 F.3d 192, 195 (2d Cir. 2005). The Court also finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). The Clerk of Court shall dismiss this petition and close this case.

SO ORDERED.

Dated: March 18, 2015
New York, New York



ALISON J. NATHAN
United States District Judge

